REMARKS

With entry of this Amendment, claims 1, 5, 7-12, 15, 17, and 18 are pending. Applicants have canceled claims 3, 6, 13, 16, 19, and 20 without prejudice or disclaimer of the subject matter of those claims. Applicants also amended claim 1 to recite "an antiaging composition comprising the following components (A) and (B)" in which component (A) is ascorbic acid 2-glucoside. Claims 12 and 18 have been amended to recite a method step. Support for these amendments may be found in the specification at, for example, page 2, line 34 to page 3, line 4; page 3, line 32 to page 4, line 11; and page 4, line 35 to page 5, line 12. Applicants believe that these amendments do not introduce new matter.

The Office objects to the specification because of "extraneous spacing" throughout the specification. Office Action, page 3. Applicants attach a marked-up copy of a substitute specification and the corresponding clean copy. The substitute specification includes format changes (e.g., line spacing, add paragraph numbering, and remove line numbering), correction of typographical or grammatical errors, and a description of the lineage of the application. None of the changes made to the substitute specification introduce new matter. Applicants request that the Office withdraw its objection to the specification in light of the attached substitute specification. If the attached substitute specification does not address the "extraneous spacing" referred to by the Office, Applicants request that the Office further specify the correction it seeks.

The Office objects to claims 1 and 20, provisionally rejects claims 1, 3, and 5-11 for alleged obvious-type double patenting, and rejects the pending claims under one or

more of 35 U.S.C. §§ 112, second paragraph, 102, and 103. Applicants address these objections and rejections below.

Claim Objection

The Office objects to claims 1 and 20 because, according to the Office, the term "salt" should be plural. Office Action, page 4. Applicants address this objection with regard to claim 1, which is still pending. To facilitate prosecution, claim 1 has been amended to recite "adenosine 2'-monophosphate, adenosine 3' -monophosphate, adenosine 5' -monophosphate, cyclic adenosine 3',5'-monophosphate, and salts thereof." The other occurrence of the term "salt" has been deleted from claim 1. Because the term "salt" has been changed to its plural, "salts," Applicants request that the Office withdraw this objection.

Double Patenting

Claims 1, 3, and 5-11 are provisionally rejected for alleged obvious-type double patenting as unpatentable over claims 5 and 6 of copending application 11/722,965. Office Action, page 5. According to the Office, both sets of claims are directed to a composition comprising an adenosine monophosphate and an ascorbic acid derivative. *Id.* Although there are additional components present in the compositions of the copending claims, the Office interprets the term "comprising" as an open term that allows other components not recited in the instant claims to be present. *Id.*

Applicants note that M.P.E.P. § 804 addresses the situation of alleged double patenting in two copending applications. This section provides that "[t]he 'provisional'

double patenting rejection should continue to be made by the examiner in each application . . . unless that 'provisional' double patenting rejection is the only rejection remaining in at least one of the applications." In view of the amendments to the claims and remarks on record to obviate the current objections and rejections to the claims, Applicants submit that the provisional double patenting rejection should be the only remaining rejection. If the "provisional" double patenting rejection in one application is the only rejection remaining in that application, the Office should then withdraw that rejection and permit the application to issue as a patent, thereby converting the "provisional" double patenting rejection in the other application(s) into a double patenting rejection at the time the one application issues as a patent." *See* M.P.E.P. § 804. For this reason, Applicants request that this provisional double patenting rejection be withdrawn.

Rejections Under 35 U.S.C. § 112

The Office rejects claims 12, 13, and 15-20 under 35 U.S.C. § 112, second paragraph, as allegedly indefinite. Office Action, page 5. Regarding claims 12, 13, and 15-17, the Office contends that these claims are directed to a method of potentiating the anti-aging effect of ascorbic acid, a derivative thereof, or salt thereof without reciting a method step. *Id.* at page 6. In the absence of reciting a method step, the Office concludes that these claims read on a product. Applicants address this rejection with regard to claims 12, 15, and 17, which are still pending.

Solely to facilitate prosecution and without acquiescing in the rejection, Applicants amended independent claim 12 to recite "the step of incorporating at least

one purine nucleic acid-related substance selected from the group (B) consisting of adenosine 2' -monophosphate, adenosine 3' -monophosphate, adenosine 5' -monophosphate, cyclic adenosine 3',5'-monophosphate, and salts thereof into the composition." Applicants contend that claim 12 is definite, as it is a method claim that recites at least one method step. Accordingly, Applicants request that the Office withdraw this rejection.

The Office also rejects claims 19 and 20 as allegedly indefinite for providing for the use of an ascorbic acid derivative and an adenosine monophosphate without reciting any method steps. Office Action, page 6. Solely to advance prosecution, Applicants have canceled claims 19 and 20, rendering this rejection moot. Applicants request that this rejection be withdrawn.

Rejection Under 35 U.S.C. § 101

The Office rejects claims 19 and 20 under 35 U.S.C. § 101 for providing for the use of an ascorbic acid derivative and an adenosine monophosphate without reciting any method steps. *Id.* Solely to advance prosecution, Applicants have canceled claims 19 and 20, rendering this rejection moot. Applicants request that this rejection be withdrawn.

Rejection Under 35 U.S.C. § 102

Claims 1, 10, and 11 stand rejected under 35 U.S.C. § 102(a) as allegedly anticipated by www.nuinternational.co.jp/seibun.html+AMP ("nuinternational") based on Applicants' explanation of the relevance of this reference provided in an IDS filed on

May 16, 2005. Office Action, page 7. Applicants have allegedly described the nuinternational reference as disclosing a refreshing gel comprising Mg ascorbyl phosphate and AMP (adenosine monophosphate). *Id.* at page 8. The Office interprets this alleged description as teaching a mixture of D and L isomers of ascorbyl phosphate and adenosine 2'-monophosphate, adenosine 3' -monophosphate, adenosine 5' -monophosphate, or mixtures of these forms of adenosine. *Id.*

Solely to facilitate prosecution and with acquiescing in the rejection, Applicants have amended claim 1 to recite "an antiaging composition comprising the following components (A) and (B)" in which component (A) is ascorbic acid 2-glucoside. The nuinternational reference does not teach an antiaging composition comprising ascorbic acid 2-glucoside. Because the nuinternational reference does not teach each and every element of independent claim 1, this reference cannot anticipate claim 1 or dependent claims 10 and 11. Applicants therefore request that this rejection be withdrawn.

Rejection Under 35 U.S.C. § 103

The Office rejects claims 1, 3, 5-13, and 15-18 under 35 U.S.C. § 103(a) as allegedly obvious over Wakamatsu et al. (WO 02/41853) in view of Castiel et al. (published U.S. Patent Application 2002/0042380 A1). Office Action, page 9. The Office uses U.S. Patent 6,946,436 B2 as an alleged English equivalent of Wakamatsu. *Id.* According to the Office, Wakamatsu teaches an oil-in-water (O/W) emulsion comprising an electrolyte where the preferred electrolytes are adenosine monophosphate, cyclic adenosine monophosphate, salts thereof, ascorbic acid, and derivatives thereof. *Id.* Wakamatsu also allegedly teaches that adenylic acid

derivatives have moisturizing and anti-aging effects when applied to the skin and that electrolytes can be used alone or in combination of two or more species. *Id.* The Office acknowledges that Wakamatsu does not teach a composition in which AMP and an ascorbic acid derivative are combined nor does Wakamatsu teach the function of ascorbic acid derivatives. *Id.* at page 10. Attempting to compensate for the teachings of Wakamatsu, the Office turns to Castiel, which allegedly teaches ascorbic acid 2-glucoside as a derivative of Vitamin C.

Combining the alleged teachings of Wakamatsu and Castiel, the Office suggests that it would have been obvious to combine an AMP as taught in Wakamatsu with the ascorbic acid derivatives of Wakamatsu and Castiel to formulate a composition with anti-aging action because AMP derivatives and ascorbic acid derivatives are used for the same purpose, to keep skin from aging. *Id.* at pages 10 and 11. Applicants respectfully disagree and address this rejection with respect to claims 1, 5, 7-12, and 15, 17, and 18, which are still pending.

Contrary to the Office's description of Wakamatsu and Castiel, the AMP derivatives taught in Wakamatsu and the ascorbic acid compounds taught in Castiel are not taught as having the same purpose. In Wakamatsu, the AMP derivatives have a moisturizing effect and stimulate skin cell turnover whereas Castiel teaches that the ascorbic acid compounds augment epidermal lipogenesis. See Wakamatsu, col. 7, lines 45-54 and Castiel, paragraph [0023]. Moreover, while adenosine phosphates may be taught as a "preferable" type of electrolyte in Wakamatsu, ascorbic acid is but one of several additional possible electrolytes recited in Wakamatsu. *See* col. 7, lines 14-40. Whether or not Castiel teaches ascorbic acid 2-glucoside as a derivative of ascorbic

acid is irrelevant because the skilled artisan would have to selectively pick ascorbic acid from the list of electrolytes in Wakamatsu to even consider Castiel's alleged teachings. Indeed, if one were to combine the electrolyte choices listed in Wakamatsu with the "preferred" ascorbic acid compounds listed in Castiel, approximately 380 possible combinations result. Furthermore, if one were to include the electrolyte "salts" and "derivatives" and "like nucleic acid substances" and "like amino acids" described in Wakamatsu in combination with all of the ascorbic acid compounds contemplated by formula I of Castiel, the number of possible combinations easily reaches into the thousands. To pick out ascorbic acid in particular from Wakamatsu's long list let alone ascorbic acid 2-glucoside specifically from Castiel in the face of thousands of possible combinations, requires improper hindsight based on the teaching of the instant specification.

Indeed, in the absence of the present specification, one of ordinary skill in the art would not be aware of the synergistic effect that the purine nucleic acid-related substances recited in claim 1 have on potentiating the anti-aging and pigment prevention effects of ascorbic acid 2-glucoside. *See* the specification at page 19, lines 3-29 and Test Example 1. And, as Applicants noted above, Wakamatsu teaches that have a moisturizing effect and stimulate skin cell turnover whereas Castiel teaches that the ascorbic acid compounds augment epidermal lipogenesis. Given these different functions between the two components and the fact that ascorbic acid is listed in Wakamatsu as just another electrolyte with no particular emphasis over the other several electrolytes taught in Wakamatsu, the invention of claims 1, 5, 7-12, and 15, 17,

and 18 are not obvious in light of these references. Applicants therefore request that this rejection be withdrawn.

Conclusions

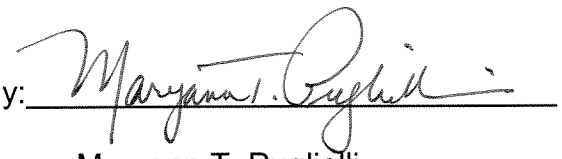
In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of claims 1, 5, 7-12, 15, 17, and 18.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: April 30, 2008

By: 

Maryann T. Puglielli
Reg. No. 52,138
(202) 408-4000

Attachments: A clean copy of the substitute specification and a marked-up copy of the substitute specification